IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. 536 of l995
in
L.A.R No. 7 of l983
Mahanagar Telephone Nigam Ltd.. appellants
vs
Shri Madhavdas Dwarkadas
Shroff and ors ..respdts

Ms S.I.Shah for appellants
Mr V.C.Kotwal Sr Counsel with Mr Chander i/b Mulla and Mulla and CBC for respondents
with
Appeal No. 537 of l995
in
L.A.R. No. 8 of l983
Group General Manager (Development)
Mahanagar Telephone Nigam Ltd.. appellants
vs
Madhavdas Dwarkadas Shroff & ors..respondents
Ms S I Shah for appellants
Mr L.C.Chogle with Ms Usha Gadagkar i/b Khona and Kayser for respondents.

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l2.l.2005

Oral Judgement: (Per A.P.Shah J.)

I. These appeals arise out of and are directed against a common award and decree passed by N D Vyas J. dated 6/7th October l994 in L.A.R Nos. 7 of l983 and 8 of l983 under section l8 of the Land Acquisition Act, l894. As far as L.A.R No.7 of l983 is concerned same relates to the land having a total area of 673.9l sq meters comprising of C.S No.l/l572 admeasuring 249.l6 sq mtrs and

C.S.No.2/l572 admeasuring 424.75 sq mtrs. The said land is abutting on Shaikh Memon Street, very near the junction of Shaikh Memon Street with Kalbadevi Road. Similarly the area of land in respect of L.A.R No 8 of l983 is 459.87 sq mtrs comprising of C.S.No.4 of l572 abuts on the Shaikh Memon Street and is adjoining the land in L.A.R.No. 7 of l983. The said lands have been acquired pursuant to the preliminary notification published in the Gazette on l0.l2.2963 for the purpose of "New Telephone Exchange Building" (now MTNL).

2. Before the Special Land Acquisition Officer(SLAO) the claimants in L.A.R No.7 of l983 claimed Rs.3,500 per sq yard as compensation which is equivalent to Rs.2990 per sq mtr. The S.L.A.O. awarded Rs.400 per sq mtr in respect of an area admeasuring 574.42 sq mtrs and at the rate of Rs.l00 per sq mtr in respect of the balance,holding it to be passage land. In respect of L.A.R No.8 of l983 the S.L.A.O. awarded at the same rate i.e. Rs.400 per sq mtr for 374.l7 sq mtrs and Rs.l00 per sq mtr for the balance land,holding it to be passage land. The S.L.A.O awarded Rs.22,375/- for the structure. He also awarded l5% solatium and interest under l967 amendment. The claimants not

having accepted the offer contained in the award,filed references under section l8 of the Land Acquisition Act in this court, pursuant to which the learned single Judge has enhanced the market value of the land to Rs.2000 per sq mtr. leaving the valuation of the building undisturbed. Being aggrieved by the judgment and award of the learned single Judge, the acquiring body i.e. MTNL has filed the present appeals.

3. We have heard Ms S.I.Shah,learned counsel appearing in support of the appeals and Shri V.C.Kotwal and Shri L.C.Chogle appearing for the respondents. We have been taken through the record of the appeals by the learned counsel for the parties. Ms Shah submitted that the learned single Judge committed an error in relying upon the sale instance Exhibit E in respect of Bank of India building which is not comparable with the land in question. She urged that the Bank of India transaction was a special transaction with several facilities which were available as per the needs and requirements of the willing purchaser i.e. Bank of India and, therefore, the price fixation for the said developed property cannot be compared with the land in question. She further submitted

that the learned Judge was also wrong in relying upon the sale instance of the land under acquisition by adjusting l0% increase for several years especially when the sale had taken place in l945 i.e.nearly l8 years prior to section 4 notification. According to the learned counsel the method adopted by the learned single Judge is contrary to the well established principles relating to the determination of the compensation of the acquired lands. Ms Shah submitted that the sale instance at Exh 3 relied upon by the S.L.A.O was the only comparable sale instances and fixation of the compensation by the S.L.A.O. was just and fair and there was no need to interfere with the well considered award of the S.L.A.O. In reply Mr.Kotwal and Mr.Chogle contended that from the point of view of frontage and location ,size and proximity, the sale instance in respect of Bank of India Exh E is comparable instance and even assuming that the Bank had special interest in acquiring the property, the learned single Judge has made downward adjustment of l5% and made further deduction of l0% p.a. as the sale instance had taken place 3 years after section 4 notification. The learned counsel therefore submitted that there is no reason to disturb the

finding of fact recorded by the learned single Judge that the sale instance of Bank of India as comparable instance with the land under acquisition.

4. Before embarking upon the inquiry as to the correctness of the contentions raised before us it would be appropriate to notice the decision of the Supreme Court in Chimanlal vs Spl Land Acquisition Officer, Poona, AIR l988 SC l652 which lays down the principles for determination of compensation. The Supreme Court has held that while determining market value of land the following factors have to be borne in mind;-

> "l) Determined as on the crucial date of publication of the modification under S 4 of the Land Acquisition Act (date of Notifications under Ss 6 and 9 are irrelevant).
>
> 2) The determination has to be made standing on the date line of valuation (date of publication of notification under S.4) as if the valuer is a hypothetical purchaser willing to purchase land from the open

market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land as a reasonable price.

3) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

4) Only genuine instances have to be taken into account(Some times instances are rigged up in anticipation of Acquisition of land.)

5) Even post notification instances can be taken into account (l) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

6) The most comparable instances out of the genuine instances have to be identified on the following considerations:

i) proximity from time angle.

ii) proximity from situation angle.

7) Having identified the instances, which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

8) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors evaluated in terms of price variation as a prudent purchaser would do.

9) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors."

5. In Chimanlal’s case the Court held that the exercise indicated in clauses (l) to (9) above has to be undertaken in a common sense manner as a

prudent man of the world of business would do. In this connection the Court noted the following illustrative (not exhaustive) factors:-

"Plus factors	Minus factors
l.Smallness of size	Largeness of area
2.Proximity to a road	situation in the interior at a distance from the road
3.frontage on a road	narrow strip of land with vary small frontage compared to depth.
4.nearness to developed area	lower level requiring the depressed portion to be filled up.
5.regular shape	remoteness from developed locality.
6.level vis-a-vis land under acquisition	some special disadvantageous factor which would deter a purchaser."

It was held that the evaluation of these factors depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. Every case must

be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

6. In a recent case of Shahaji Kuriakose vs Indian Oil Corpn Ltd (200l) 7 SCC 650 the Supreme Court has observed as under;

> "Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under section 4 of the Act. But comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land related in the sales. The factors laid down inter alia are: (l) the sale must be a genuine transaction, (2) that the sale

> deed must have been executed at the time proximate to the date of issue of notification under section 4 of the act, (3) that the land covered by the sale must be in the vicinity of the acquired land,(4) that the land covered by the sales must be similar to the acquired land and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site, or nature of land between land covered by sales and land acquired it is open to the court to proportionately reduce the compensation for acquired land then what is reflected in the sale depending upon the disadvantages attached with the acquired land."

7. In the light of these well established principles when we peruse the record it is seen that in all l6 instances have been cited by the parties. Seven sale instances are relied upon by

the claimants and eight sale instances plus one award are relied upon by the SLAO and the acquiring body. On behalf of the claimants Mr. Divecha an expert valuer was examined and he relied upon the valuation report prepared by him which was prepared in the year l972.In his report Mr. Divecha has relied upon the instance of sale dated l3.5.l967 in respect of C.S.Nos l397 to l399 totally admeasuring 894 sq yds under which Bank of India purchased from the Bombay bullion Association Ltd, the land plus building for a lumpsum price of Rs.44,00,000. After deducting the value of the building, he arrived at the value of land at Rs.25,ll,580 i.e. Rs.2809 per sq yard equivalent to Rs.3359 per sq mtr . On the other hand Mr. Kamat, valuer examined on behalf of the appellants deposed that the instance Exh 3 was the only comparable instance, that the passages were of common ownership and the same were valued by him at 25% of the market value and although he agreed with the method adopted by Mr.Divecha in respect of valuation of building in Bank of India instance i.e. Exh E, he did not agree with the valuation. It may be mentioned that both valuers i.e. Mr. Divecha and Mr.Kamat had agreed on one point i.e. from l945 onwards the land prices have been

increasing approximately at the rate of l0% per yard. Mr. Kamat has opined that the annual increase has been between l0% to l5%. It is also disclosed from the record that the land under acquisition is situated in Bhuleshwar Division which is one of the busiest commercial localities in Bombay, that most of the principal markets viz, the cotton markets, the bullion exchange, dana bazar are all situated in the vicinity, that markets of grain, sugar, oil spices are also situated in nearby locality and that there are facilities of bus transport available for going to the important places from the land under acquisition.

8. The learned single Judge has held and, in our opinion rightly that the sale instance at Exh E is not comparable with the land under acquisition. The said sale instance is in respect of land at C.S.No.l7l5 admeasuring l7l.40 sq mtrs which was sold for Rs.5l,250 on l4.7.l966 giving a rate of Rs 299 per sq mtr . This plot of land is situated to the south west of the land under acquisition about l50 ft in the interior on Malharrao Wadi Road. It is true this sale is nearer in point of time to the date of notification. However, it is clearly seen

that the sale instance pertains to a piece of land abutting on a small lane off Dadiseth Agyuari Lane which is off Kalbadevi Road, that because of its width it is not possible for vehicular traffic to pass through and it is only for pedestrians and that the location is residential. On the other hand the situation of the land under acquisition is far superior and locationwise it is right in the centre of commercial activity having proximity to Kalbadevi Road and effective frontage on Shaikh Memon Street. In fact the valuer examined by the appellants has conceded that locationwise, situationwise and sizewise the sale instance at Exh E would be more comparable to the land under acquisition than the sale instance at Exh 3. The sale instance at Exh E pertains to land admeasuring 894 sq yards and the total price paid by the Bank of India was lumpsum price of Rs,.44,00,000 for land and building. It is true that the sale had taken place 3 years after section 4 notification was issued but it is now well established that subsequent transactions which are not proximate in point of time to the acquisition can also be taken for the purpose of determining whether as on the date of the acquisition there was upward trend in the price of land in the area and further under

certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value.(see Administrator Genl of W B vs Collector, Varanasi, AIR l988 SC 943 and Om Prakash(D) by Lrs and ors vs. Union of India (UOI) and anr,2004(6) SCALE 455). In the light of this settled legal position we do not think that the learned single Judge has committed any error in relying upon the sale instance at Exh E, by deducting l0% p.a. as the sale instacne had taken place 3 years after section 4 notification.

9. The learned single Judge found that from the point of view of commercial potentiality also Exh E would be more comparable than Exh 3. This sale instance is of l967 in respect of C S Nos. l297 to l399 totally admeasuring 894 sq yds under which Bank of India purchased the land for a lumpsum of Rs.44 lacs. After valuing the building, the valuer arrived at the value of land at Rs 25,ll,580 i.e. Rs. 2809 per sq yd equivalent to Rs.3359 per sq mtr. However it was conceded before the learned

single Judge that there was mistake in calculation and the correct figure would be Rs.3226.22 per sq mter .The land purchased by the Bank of India was fully developed property having facility of lockers on the ground and basement. Therefore one must presume that the land was of special value for the purchaser i.e. Bank of India as it has some special advantages. We may,however, add that for the lockers the Bank has separately paid. In any event the learned Judge has made l5% downward adjustment on account of special advantage to the purchaser. Then the learned single Judge has made further downward deduction at the rate of l0% p.a. for 3 years after the relevant date. Thus after further reducing by 30% the value per sq mt the learned single Judge has fixed the market value at Rs.2000 per sq meter. The learned Judge has also referred to the sale instances at Exhibits A and B i.e. in respect of lands under acquisition where the average market price comes to Rs.9l9 per sq yd i.e. Rs.l099.l2 per sq mtr. The sale instance was of l945 and by applying upward adjustment of l0% per year the learned Judge has arrived at the conclusion that the market value would be at Rs.2000.l3 per sq mt. We may mention that the learned Judge has used this method only as a cross

check and not as basis for arriving at the valuation. In the circumstances, we do not see any reason to disturb the finding of fact recorded by the learned Judge. We therefore dismiss the appeals with no order as to costs.

The respondents are at liberty to withdraw the amount deposited by the appellants with accrued interest. Security, if any, furnished by the respondents to stand discharged. The amount of cost i.e. Rs. 5000 deposited by the appellants to be paid to the respondents.

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it was held as under:

"In the circumstances,the High Court was justified in working out the fair market value of the lands in question on the basis of Rs.l6,750 per bigha as on 30,.l0.l963.The High Court noticed that in several judgments of this court escalation at different and varying rates i.e. 6% per annum from l959 to l965 @ l0% per annum for every year from l966 to l973 and @ l2% per annum from l975 had been considered to be reasonable increase to arrive at the fari market value, assuming that the pace of escalation during this period was normal for the entire period from l959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle tot he facts and circumstances before it, and accepted increase of l0% every year progressively from l963 to l973 and thereafter @ l2% every year progressively upto the date of acquisition. The High

Court noticed in the judgment that if escalation is allowed on this basis, the fair market value would be Rs. l,28,889 per bigha in case progressive increase is allowed @ l0% for the entire period, the amount will work out to Rs.l,08,397 per bigha. Allowing appreciation @ l2% for every year , not cumulatively, but at a flat rate of l2% per annum from l963 to l983, the amount would out to Rs.56,ll2 per bigha.The High Court in its judgment under appeal pointed out that the market value of Rs.l6,750 per bigha fixed in the case of Dharambir and ors v Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable for commercial purposes, is trite. After having worked out the market value of the lands on various basis and keeping in view the fact that between 8.l2.l982 and 2.6.l983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all categories of lands situated in the villages in question

as on the date of acquisition should be fixed at Rs.82,255 per bigha."